

AMENDED IN ASSEMBLY SEPTEMBER 6, 2001

AMENDED IN ASSEMBLY AUGUST 20, 2001

AMENDED IN ASSEMBLY JUNE 6, 2001

CALIFORNIA LEGISLATURE—2001–02 SECOND EXTRAORDINARY SESSION

**SENATE BILL**

**No. 39**

**Introduced by Senator Speier**

May 17, 2001

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An act to amend Sections 216, 228.5, ~~362, and 431~~ and 362 of, and to add and repeal Section 761.3 of, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 39, as amended, Speier. ~~Public Utilities~~ *Public Utilities*

(1) Under existing law, ownership or operation of a facility that has been certified by the Federal Energy Regulatory Commission as an exempt wholesale generator is not sufficient to make a corporation or person a public utility under the Public Utilities Act, a violation of which is a crime.

This bill would delete this provision. To the extent that this change would expand the class of utilities subject to the act, this bill would impose a state-mandated local program by changing the definition of an existing crime.

(2) Existing law requires the Public Utilities Commission, in proceedings, to ensure that facilities needed to maintain the reliability of the electric supply remain available and operational, consistent with maintaining open competition and avoiding an overconcentration of market power.

This bill would require the commission to require that generation facilities located in California that have been disposed of pursuant to specified *provisions of* existing law are operated by the persons or corporations who own or control them in a manner that ensures their availability to maintain the reliability of the electric supply system. ~~The bill would authorize the commission to accomplish this by issuing orders and directives that it determines to be necessary and appropriate, after a hearing. The bill would authorize the commission to ensure electric service reliability by prohibiting economic or physical withholding of the output of a divested generation facility from delivery to or for the benefit of California end users.~~

~~(3) Existing law requires the commission to annually determine a fee to be paid by public utilities, except as specified, to produce a total amount equal to that amount established in the authorized commission budget for the same year.~~

~~This bill would require the commission to annually determine a fee to be paid by certain generation facilities subject to the jurisdiction of the commission, or upon which the commission imposes requirements, as prescribed. Because a violation of a requirement of the commission is a crime, this bill would impose a state-mandated local program by creating a new crime.~~

~~(4) Under existing law, the commission has regulatory authority over public utilities, including electric corporations.~~

This bill would authorize the commission, in consultation with the applicable control area operator, until January 1, 2006, to prescribe inspection, maintenance, and operating practices and procedures for any electric plant used to produce or generate electric energy located in the State of California that is necessary to ensure public health and safety and electric service reliability and adequacy. The bill would exempt from this provision an electric plant that produces or generates electricity using cogeneration, a local publicly owned electric utility, and a city and county operating as a public utility, furnishing electricity.

~~(5)~~

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~(6)~~



(5) This bill would provide that its provisions shall become operative only if AB 28 of the 2001–02 Second Extraordinary Session of 2001–02 is enacted and becomes effective.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) Electric generating facilities and powerplants in California  
4 are essential facilities for maintaining and protecting the public  
5 health and safety of California residents and businesses.

6 (b) It is in the public interest to ensure that electric generating  
7 facilities and powerplants located in California are effectively and  
8 appropriately maintained and efficiently operated.

9 (c) Owners and operators of electric generating facilities and  
10 powerplants are public utilities subject to the control of the  
11 Legislature. *powerplants provide a critical and essential good to*  
12 *California residents. It is in the public interest that the Public*  
13 *Utilities Commission seek enforcement capability from the*  
14 *Federal Energy Regulatory Commission regarding the private*  
15 *generator agreement to provide for broader state control of*  
16 *operational activities of generation facilities in the state.*

17 SEC. 2. Section 216 of the Public Utilities Code is amended  
18 to read:

19 216. (a) “Public utility” includes every common carrier, toll  
20 bridge corporation, pipeline corporation, gas corporation,  
21 electrical corporation, telephone corporation, telegraph  
22 corporation, water corporation, sewer system corporation, and  
23 heat corporation, where the service is performed for, or the  
24 commodity is delivered to, the public or any portion thereof.

25 (b) Whenever any common carrier, toll bridge corporation,  
26 pipeline corporation, gas corporation, electrical corporation,  
27 telephone corporation, telegraph corporation, water corporation,  
28 sewer system corporation, or heat corporation performs a service  
29 for, or delivers a commodity to, the public or any portion thereof  
30 for which any compensation or payment whatsoever is received,  
31 that common carrier, toll bridge corporation, pipeline corporation,  
32 gas corporation, electrical corporation, telephone corporation,

1 telegraph corporation, water corporation, sewer system  
2 corporation, or heat corporation, is a public utility subject to the  
3 jurisdiction, control, and regulation of the commission and the  
4 provisions of this part.

5 (c) When any person or corporation performs any service for,  
6 or delivers any commodity to, any person, private corporation,  
7 municipality, or other political subdivision of the state, that in turn  
8 either directly or indirectly, mediately or immediately, performs  
9 that service for, or delivers that commodity to, the public or any  
10 portion thereof, that person or corporation is a public utility subject  
11 to the jurisdiction, control, and regulation of the commission and  
12 the provisions of this part.

13 (d) Ownership or operation of a facility that employs  
14 cogeneration technology or produces power from other than a  
15 conventional power source or the ownership or operation of a  
16 facility that employs landfill gas technology does not make a  
17 corporation or person a public utility within the meaning of this  
18 section solely because of the ownership or operation of that  
19 facility.

20 (e) Any corporation or person engaged directly or indirectly in  
21 developing, producing, transmitting, distributing, delivering, or  
22 selling any form of heat derived from geothermal or solar  
23 resources or from cogeneration technology to any privately owned  
24 or publicly owned public utility, or to the public or any portion  
25 thereof, is not a public utility within the meaning of this section  
26 solely by reason of engaging in any of those activities.

27 (f) The ownership or operation of a facility that sells  
28 compressed natural gas at retail to the public for use only as a  
29 motor vehicle fuel, and the selling of compressed natural gas at  
30 retail from that facility to the public for use only as a motor vehicle  
31 fuel, does not make the corporation or person a public utility  
32 within the meaning of this section solely because of that  
33 ownership, operation, or sale.

34 (g) The ownership, control, operation, or management of an  
35 electric plant used for direct transactions or participation directly  
36 or indirectly in direct transactions, as permitted by subdivision (b)  
37 of Section 365, sales into the Power Exchange referred to in  
38 Section 365, or the use or sale as permitted under subdivisions (b)  
39 to (d), inclusive, of Section 218, does not make a corporation or



1 person a public utility within the meaning of this section solely  
2 because of that ownership, participation, or sale.

3 SEC. 3. Section 228.5 of the Public Utilities Code is amended  
4 to read:

5 228.5. (a) The terms “qualifying small power producer,”  
6 “small power production facility,” and “qualifying small power  
7 production facility” have the same meaning as found in Section  
8 796 of Title 16 of the United States Code and regulations enacted  
9 pursuant thereto.

10 (b) Notwithstanding any other provision of law, a qualifying  
11 small power producer owning or operating a small power  
12 production facility is not a public utility subject to the general  
13 jurisdiction of the commission solely because of the ownership or  
14 operation of the facility.

15 SEC. 4. Section 362 of the Public Utilities Code is amended  
16 to read:

17 362. (a) In proceedings pursuant to Section 455.5, 851, or  
18 854, the commission shall ensure that facilities needed to maintain  
19 the reliability of the electric supply remain available and  
20 operational, consistent with maintaining open competition and  
21 avoiding an overconcentration of market power. In order to  
22 determine whether the facility needs to remain available and  
23 operational, the commission shall utilize standards that are no less  
24 stringent than the Western Systems Coordinating Council and  
25 North American Electric Reliability Council standards for  
26 planning reserve criteria.

27 (b) The commission shall require that generation facilities  
28 located in California that have been disposed of in proceedings  
29 pursuant to Section 851 are operated by the persons or  
30 corporations who own or control them in a manner that ensures  
31 their availability to maintain the reliability of the electric supply  
32 system. ~~The commission may accomplish this by issuing orders~~  
33 ~~and directives that it determines are necessary and appropriate,~~  
34 ~~after a hearing. The commission may prevent an~~  
35 ~~overconcentration of market power and ensure electric service~~  
36 ~~reliability by prohibiting economic or physical withholding of the~~  
37 ~~output of a divested generation facility from delivery to or for the~~  
38 ~~benefit of California end users.~~

39 ~~SEC. 5. Section 431 of the Public Utilities Code is amended~~  
40 ~~to read:~~

1     ~~431. (a) The commission shall annually determine a fee to be~~  
2 ~~paid by every electrical, gas, telephone, telegraph, water, sewer~~  
3 ~~system, and heat corporation and every other public utility~~  
4 ~~providing service directly to customers or subscribers and subject~~  
5 ~~to the jurisdiction of the commission other than a railroad, except~~  
6 ~~as otherwise provided in Article 2 (commencing with Section~~  
7 ~~421). The commission shall also annually determine a fee to be~~  
8 ~~paid by every generation facility subject to the jurisdiction of the~~  
9 ~~commission pursuant to subdivision (b) of Section 362 or upon~~  
10 ~~which the commission imposes requirements pursuant to Section~~  
11 ~~761.3.~~

12     ~~(b) The commission shall establish the annual fee to produce a~~  
13 ~~total amount equal to that amount established in the authorized~~  
14 ~~commission budget for the same year, including adjustments for~~  
15 ~~increases in employee compensation, other increases appropriated~~  
16 ~~by the Legislature, and an appropriate reserve to regulate public~~  
17 ~~utilities less the amount to be paid from special accounts or funds~~  
18 ~~pursuant to Section 402, reimbursements, federal funds, and any~~  
19 ~~other revenues, and the amount of unencumbered funds from the~~  
20 ~~preceding year.~~

21     ~~(c) This article does not apply to any electrical cooperative as~~  
22 ~~defined in Chapter 5 (commencing with Section 2776) of Part 2.~~

23     ~~(d) This article applies to radiotelephone utilities as defined in~~  
24 ~~Section 4902 as those provisions read on December 31, 1984.~~

25     ~~SEC. 6.—~~

26     ~~SEC. 5.~~ Section 761.3 is added to the Public Utilities Code, to  
27 read:

28     761.3. (a) Notwithstanding Section 216, and except as  
29 provided in subdivision (b), the commission, in consultation with  
30 the applicable control area operator, may prescribe inspection,  
31 maintenance, and operating practices and procedures for any  
32 electric plant used to produce or generate electric energy located  
33 in the State of California that is necessary to ensure public health  
34 and safety and electric service reliability and adequacy. Nothing  
35 in this section authorizes the commission to regulate rates for  
36 wholesale electric energy transactions in interstate commerce.

37     (b) This section does not apply to any of the following:

38     (1) An electric plant that produces or generates electricity using  
39 cogeneration, as defined in Section 218.5.

(2) A local publicly owned electric utility, as defined in subdivision (d) of Section 9604.

(3) A city and county operating as a public utility, furnishing electric service as provided in Section 10001.

(c) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

~~SEC. 7.—~~

*SEC. 6.* No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

~~SEC. 8.—~~

*SEC. 7.* This act shall become operative only if Assembly Bill 28 of the ~~Second Extraordinary Session of 2001–02~~ *2001–02 Second Extraordinary Session* is enacted and becomes effective.

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